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6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

8 JUSTIN CODY HARPER,

9 Plaintiff,

10 vs.
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12 CITY OF REDLANDS, NICHOLAS
13 KOAHOU,

14 Defendants.
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Case No. 5:23-cv-00695-SSS-DTB

Assigned to:

Hon. District Judge Sunshine S. Sykes

Hon. Mag. Judge Sheri Pym

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S EX PARTE
APPLICATION FOR AN ORDER
CERTIFYING DEFENDANTS'
APPEAL AS FRIVOLOUS AND
RETAINING JURISDICTION**

[PROPOSED] ORDER

Before the Court is an *ex parte* application by Plaintiff for an order certifying Defendants' interlocutory appeal as frivolous and retaining jurisdiction. Having reviewed the memoranda submitted by the parties, IT IS ORDERED as follows:

This Court finds that the Interlocutory Appeal filed by Defendants of this Court's order denying Defendants' motion for summary judgment and denying qualified immunity to Defendant Koahou is an appeal from a denial of summary judgment on the grounds of the existence of disputed questions of material fact. "[I]mmediate appeal from the denial of summary judgment on a qualified immunity plea is available... when the appeal presents a 'purely legal issue...' However, instant appeal is not available . . . when the district court determines that factual issues genuinely in dispute preclude summary adjudication." *Ortiz v. Jordan*, 131 S.Ct. 884, 891 (2011). The Ninth Circuit has held that "an order denying qualified immunity on the ground that a genuine issue of material fact exists is not a final, immediately appealable order." *Maropulos v. Cnty. of Los Angeles*, 560 F.3d 974, 975 (9th Cir. 2009) (internal citations omitted). As such, the instant appeal is not available, and this Court retains jurisdiction over this matter. The trial schedule remains in place as currently set.

IT IS SO ORDERED.

Dated: _____

Hon. Judge Sunshine S. Sykes
U.S. District Court Judge